

P & M PETROLEUM MANAGEMENT

IBLA 90! 512

Decided September 24, 1997

Appeal from a decision of the Deputy State Director, Mineral Resources, Utah, Bureau of Land Management, upholding a decision by the Chief, Branch of Fluid Minerals, Utah, Bureau of Land Management, requiring a unit operator to readjust the allocation under communitization agreements retroactive to the effective date of a dependent resurvey. SDR No. UT! 90! 9.

Set aside and remanded.

1. Accretion—Boundaries—Oil and Gas Leases: Communitization Agreements—Oil and Gas Leases: Lands Subject to—Surveys of Public Lands: Dependent Resurveys

Where land is added by accretion to a surveyed lot of public land riparian to a nonnavigable body of water in which the United States has title to the bed to its medial line, an oil and gas lease of the upland lot described according to the original plat of survey covers only the land in the original lot to the meander line, and a subsequent resurvey of that lot does not alter the boundaries of the lease.

2. Accretion—Boundaries—Oil and Gas Leases: Communitization Agreements—Oil and Gas Leases: Lands Subject to—Surveys of Public Lands: Dependent Resurveys

Where a surveyed lot of public land riparian to a nonnavigable body of water is leased according to the plat of survey, the area covered by the original lot remains in the lease even though part of the lot is later covered by water so long as title to the mineral estate remains in the United States.

APPEARANCES: Robert G. Pruitt, Jr., Esq., Salt Lake City, Utah, for P & M Petroleum Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

P & M Petroleum Management (P&M) has appealed from a Decision of the Deputy State Director, Mineral Resources, Utah, Bureau of Land Management

(BLM or the Bureau), affirming the April 5, 1990, Decision of the Chief, Branch of Fluid Minerals, that required P&M, the designated unit operator, to readjust the allocation of revenues and expenses between private parties to Federally approved communitization agreements retroactive to the effective date of a dependent resurvey affecting the communitized lands. <sup>1/</sup>

As part of an effort to resolve questions regarding the boundary between public lands and lands within the Navajo Indian Reservation, BLM, in 1979, undertook to resurvey, inter alia, the meander lines of the right bank of the San Juan River situated in secs. 25 and 26, T. 40 S., R. 22 E., Salt Lake Meridian, San Juan County, Utah, which form, in part, the boundaries of the leased tracts of public land committed to P&M's three communitization agreements.

Following completion of the resurvey (Group No. 592, Utah) in 1981, it was accepted by the Chief Cadastral Surveyor for Utah, BLM, on August 15, 1983, and the approved plats were officially filed in BLM's Utah State Office on September 2, 1983. In a Notice, dated August 26, 1983, which was published in the Federal Register (48 Fed. Reg. 40001 (Sept. 2, 1983)), BLM stated: "These [plats] will immediately become the basic record for describing the land for all authorized purposes." Id.

The Bureau thereafter concluded that, due to a shift in the surveyed location of the meander lines of the right bank of the San Juan River in secs. 25 and 26, the 1983 dependent resurvey had affected the number of acres of public land encompassed by four oil and gas leases (Nos. U! 18433, U! 23797, U! 41696, and U! 52026) and consequently altered the lease acreage committed to P&M's three communitization agreements. As a result, the allocation of revenues and expenses under each of those agreements would be affected.

By letter dated March 2, 1990, the Chief, Branch of Fluid Minerals, advised P&M that the leases had been "conformed" to the 1983 resurvey, and provided P&M with a revised description of the communitization agreement including the new lease acreage and percentage committed to each of the

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<sup>1/</sup> Communitization agreement No. UT! 000232, which was approved effective Aug. 1, 1983, encompassed part of lease U! 23797, issued effective Sept. 1, 1973, and all of lease U! 52026, issued effective Jan. 1, 1983. It described land situated in the S $\frac{1}{2}$ NW $\frac{1}{4}$  sec. 25, T. 40 S., R. 22 E., Salt Lake Meridian, San Juan County, Utah. Communitization agreement No. UT! 060P49! 86C684, which was approved effective Oct. 1, 1985, encompassed part of lease U! 18433, issued effective Apr. 1, 1972, and part of lease U! 23797. It described land situated in the N $\frac{1}{2}$ SW $\frac{1}{4}$  sec. 25, T. 40 S., R. 22 E., Salt Lake Meridian, San Juan County, Utah. Communitization agreement No. M049P! 84704C, which was approved effective Apr. 1, 1984, encompassed part of leases U! 18433 and U! 23797, and part of lease U! 41696, issued effective Mar. 1, 1979. It described land situated in the N $\frac{1}{2}$ NE $\frac{1}{4}$  sec. 26, T. 40 S., R. 22 E., Salt Lake Meridian, San Juan County, Utah.

communitization agreements. <sup>2/</sup> The letter also directed P&M to submit "amended" allocation schedules (Exhibits A and B) for the agreements, reflecting the change in acreage and thus the proper allocation of revenues and expenses between private parties to the agreements. Subsequently, by Decision dated April 5, 1990, the Chief, Branch of Fluid Minerals, informed P&M that "resurveys are considered effective the date of acceptance" and that the revised Exhibits A and B for its communitization agreements "must be readjusted retroactively to August 15, 1983." The consequence of BLM's determination was to alter the extent and existence of the interests of the working and royalty interest owners in the revenues and expenses of the three communitization agreements, since some leases increased while other leases decreased their respective interests under the agreements.

The P&M sought State Director's Review of the April 5, 1990, Decision contending that the retroactive readjustment was "unfair, arbitrary and contrary to the contractual commitments" under the communitization agreements:

All joint interest billings and revenue distributions, as well as royalty and overriding royalty distributions, that have occurred over the last seven years have been made on the basis of the Communitization Agreements as originally established by the parties to the contract, including [BLM]. To recalculate these payments at this time would impose a tremendous expenditure of both time and money. Certain funds previously paid to working interest and/or overriding royalty [interest] owners may not be recoverable due to their inability or unwillingness to pay. This imposes an unfair burden on the remaining interest owners. Moreover, your decision appears arbitrary inasmuch as none of your letters cite an authority or precedent for retroactive adjustments of interests within a communitized area.

(Letter to BLM, dated Apr. 25, 1990.) The P&M proposed that the readjustment be effective April 1, 1990, the first day of the month following the month in which BLM notified it of the effect of the 1983 resurvey on the communitization allocations.

In his July 16, 1990, Decision, the Deputy State Director affirmed the April 5, 1990, Decision of the Chief, Branch of Fluid Minerals, relying on Grace M. Brown, 24 IBLA 301 (1976), wherein the Board affirmed a BLM decision decreasing the acreage included under a Federal oil and gas lease, retroactive to the date of acceptance of a resurvey of the land.

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<sup>2/</sup> The BLM had informed the holders of the four leases that the land descriptions and acreage set forth in their leases were conformed to the 1983 resurvey, by the following decision letters: Aug. 11, 1989, revised Feb. 22, 1990 (U! 18433); June 16, 1988, revised Dec. 26, 1989 (U! 23797); Dec. 14, 1989 (U! 41696); Feb. 22, 1990 (U! 52026). There is no evidence that any of the lessees objected to the Decisions.

The Deputy State Director also stated that BLM could find no provision of the communitization agreements contrary to the April 5, 1990, Decision of the Chief, Branch of Fluid Minerals. The P&M has challenged this determination before us. For reasons set forth below, we set the Decision aside and remand the matter to BLM for further consideration.

[1] At the outset, we must note that both sides have proceeded under a misapprehension of law. Thus, both BLM and P&M implicitly assume that, where a subsequent resurvey of riparian lands indicates that accretions have occurred to these lands since the date of the last survey, these accretions are properly included in any existing oil and gas lease for the riparian lands. This is not correct.

The effect of accretions occurring to existing riparian leases was originally examined in Sam K. Viersen, Jr., A-30063 (June 30, 1965). In that decision, the Department affirmed the dismissal of a protest filed by Viersen, who held a lease described by legal subdivisions, against the issuance of a subsequent oil and gas lease to Ashland Oil and Refining Company under a metes and bounds land description for lands that Viersen claimed should be considered within his lease since they were accretions to lands described in his lease.

While recognizing that the general rule with respect to patenting of Federal lands riparian to nonnavigable water bodies was that the patent conveyed any accreted lands since the median thread of the water body rather than the meander line marked the limits of the conveyance, the Department determined that a different rule applied with respect to mineral leases under the Mineral Leasing Act of 1920. As described in the syllabus of the Viersen decision, the Department held that

[w]here land is added by accretion to a surveyed lot of public land riparian to a nonnavigable body of water in which the United States has title to the bed to its medial line, an oil and gas lease of the upland lot described according to the plat of survey covers only the land in the original lot to the meander line.

In essence, for purposes of oil and gas leasing, the meander line shown on the survey returns marks the limit of the lease. Accord, James L. Harden, 15 IBLA 187, 190 (1974).

[2] There is an important corollary to that rule as well. Thus, Viersen also explored the question of the effect of erosion on upland lessees. The decision in Viersen concluded that, while an upland lease conferred mineral rights only to the meander line of a nonnavigable water body as shown on the plat of survey, the subsequent submersion of part or all of the upland area did not vitiate the leasehold interest so long as Federal title to the mineral estate continued. In other words, since Federal ownership of both the surface and the mineral estate extended to the medial thread of a river, the mere submergence of uplands did not reduce or diminish rights conveyed under lease, unless those lands passed beyond the

medial thread and out of Federal ownership. <sup>3/</sup> See also James L. Harden, *supra*, at 190-92; Thomas D. Chace, A-30262 (June 30, 1965).

These principles seem clearly applicable herein. Thus, the San Juan River has been determined to be nonnavigable throughout its course in Utah. See generally United States v. Utah, 283 U.S. 64 (1931); State of Utah v. United States, 304 F.2d 23 (10th Cir. 1962). <sup>4/</sup> All of the leases in this appeal issued with acreages and descriptions of the lands involved consistent with the 1900 plat of survey and all issued with an effective date prior to the effective date of the 1983 survey. The boundaries of those leases are, thus, necessarily controlled by the 1900 survey and since, as explained above, meander lines serve as lines of boundary for mineral leases, these lease boundaries cannot be altered by a subsequent resurvey.

Those accretions apparent by a comparison of the 1900 and 1983 surveys are, in law and in fact, unleased lands at the present time. While they are subject to lease under a metes and bounds description, they were not incorporated into existing leases by the mere fact of resurvey, nor did BLM have the administrative authority to include them in such leases pursuant to the resurvey. The various BLM Decisions "conforming" existing leases to the 1983 survey, which Decisions served as the predicate for the Decision appealed herein, were, themselves, *ultra vires* and without effect since they failed to comply with statutory and regulatory prescriptions governing the issuance of oil and gas leases on Federal lands. It necessarily follows that, to the extent that BLM has ordered retroactive revisions of the communitization agreements to reflect accretive additions to riparian uplands, its Decision cannot stand.

We realize that BLM has also "conformed" existing leases to show the erosive effects of the San Juan River on its right bank. However, as noted above, the fact that the San Juan River has inundated lands shown to be upland in the 1900 survey has no effect upon existing leases unless the lands described in such leases have passed beyond the medial thread of the river. See note 3, *supra*. Only to the extent that land has eroded beyond the medial thread is there any basis for diminishing an existing leasehold, and this is done not because of the fact of resurvey, but rather because,

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<sup>3/</sup> Thus, if the United States owned the uplands on both sides of a nonnavigable river, the fact that the area under lease passed beyond the center thread would not be of any relevance to the leasehold estate. Where, however, as in the instant appeal, ownership of the uplands is divided between the United States and a third party (here, the Navajo Nation), a gradual erosion of land that ultimately results in the movement of the center thread of the riverbed past the limits of the original upland lease would divest the United States of ownership of the mineral estate in those lands now situated on the other side of the medial thread and would, necessarily, vitiate any Federal oil and gas lease to a similar extent.

<sup>4/</sup> Even were the San Juan River deemed navigable, the result would still be the same insofar as the question of the extent of an oil and gas lease is concerned. See David A. Provinse, 35 IBLA 221, 232-34 (1978).

through the process of erosion, the United States has been divested of title to both the surface and mineral estates in such land, and it may not lease what it does not own. On remand, BLM should examine the 1983 survey returns to determine which parcels, if any, are now situated beyond the center thread of the San Juan River.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is set aside and the case files are remanded for further action consistent with the foregoing.

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Gail M. Frazier  
Administrative Judge

I concur.

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James L. Burski  
Administrative Judge

